

B. K. C. asks the Utah Labor Commission to review the Administrative Law Judge's decision denying part of Mr. C.'s claim for permanent partial disability compensation under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

### **BACKGROUND AND ISSUE PRESENTED**

Mr. C. accidentally injured his back while working for Utah Transit Authority ("UTA") in 1983 and underwent back surgery in 1984. Fifteen years later, in 1999, he was advised his 1984 surgery had resulted in a permanent partial disability. In 2000, he filed an Application For Hearing with the Labor Commission seeking, among other things, compensation for the disability related to his 1984 surgery. The ALJ awarded Mr. C. the other benefits he requested, but denied his claim for permanent partial disability compensation arising from the 1984 surgery on the grounds such claim was barred by §35-1-66 and §35-1-99 of the Act.<sup>1</sup>

The only issue now before the Commission is whether §35-1-66 and §35-1-99 of the Act do, in fact, bar Mr. C.'s claim for disability compensation arising from the 1984 surgery.

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### **FINDINGS OF FACT**

The following undisputed facts are relevant to the issue raised by Mr. C.'s motion for review.

Mr. C. accidentally injured his back while working for the UTA on September 20, 1983. Mr. C. reported the accident to UTA, which accepted workers' compensation liability for the accident and paid medical benefits and temporary disability compensation accordingly.

A few months later, on February 1, 1984, Mr. C. had surgery on his back for problems caused by the accident. UTA again accepted liability and paid the costs of surgery as well as temporary disability compensation while Mr. C. recovered. The surgery was apparently successful and Mr. C. returned to work with no notable problems for the next two years. His physician did not tell him he had incurred any permanent impairment.

Approximately two years after surgery, Mr. C. began to experience back pain again. He received additional medical care, but did not ask that UTA pay for it under the workers' compensation system. Instead, he submitted the medical bills to his private health insurance plan. In 1998, Mr. C.'s back pain significantly worsened and he underwent another back surgery. UTA accepted liability for Mr. C.'s medical expense pursuant to the Utah Workers' Compensation Act, but declined to pay any disability compensation "due to the statute of limitations."

On January 18, 1999, Dr. Fotheringham concluded that Mr. C. had reached maximum

medical improvement from the second surgery. Dr. Fotheringham further concluded that Mr. C. qualified for a 10% whole person impairment from his first back surgery in 1984 and an additional 5% impairment from the second back surgery in 1998.

On April 11, 2000, Mr. C. filed an Application for Hearing with the Labor Commission's Adjudication Division, seeking payment of: 1) unpaid medical expenses; 2) future medical expenses; 3) permanent partial disability compensation based on Dr. Fotheringham's 10% impairment ratings for the 1984 surgery; and 4) permanent partial disability compensation based on Dr. Fotheringham's 5% impairment ratings for the 1998 surgery. The ALJ ordered payment of all the foregoing items except Mr. C.'s claim for permanent partial disability compensation related to the 1984 surgery, which claim the ALJ denied on the grounds it was "barred by the statute of limitations outlined in Utah Code Ann. §35-1-66 (1983)."

### DISCUSSION AND CONCLUSION OF LAW

The only issue before the Commission is whether Mr. C. is entitled to an award of permanent partial disability compensation for the 10% impairment arising from his 1984 back surgery.

As it stood in 1983, the date of Mr. C.'s accident, the Workers' Compensation Act contained two separate provisions that arguably limit Mr. C.'s ability to pursue this claim. The first provision is §35-1-66, which provides that "(t)he commission may make a permanent partial disability award at any time prior to eight years **after the date of injury**. . . ." (Emphasis added.) The second is §35-1-99, which states that a ". . . claim for compensation in any event must be filed within 8 years **from the date of the accident**."

Presumably, the Legislature had a purpose for including both provisions in the Act. The Commission concludes that, despite similarities in language, the two provisions deal with different subjects and serve different purposes. Otherwise, they would be redundant. The Commission also notes the different terms used in the two provisions. Section 66 refers to an eight-year period that commences from "the date of injury," while §99 describes an eight-year period that commences "from the date of the accident." The Commission presumes the Legislature used the foregoing phrases advisedly and, in choosing different phrases, intended different meanings.

With the foregoing considerations in mind, the Commission interprets §99's requirement that a ". . . claim for compensation. . . must be filed within 8 years from the date of the accident" to be a statute of limitations. It therefore has the effect of precluding claims a statutorily specified number of years after a claim accrues. Avis v. Board of Review, 837 P.2d 584, 587 (Utah App. 1992). The Commission notes that this limitation period commences on the date of the "accident," which in this case was September 20, 1983. Unless Mr. C. filed his claim within eight years from September 20, 1983, the Commission lacks jurisdiction over the claim.

While §99 requires Mr. C. to have filed his claim within eight years from September 20, 1983, the Utah Supreme Court has consistently held that statutory requirements for filing a claim are met by "informal filing." Specifically, submission of physician's report of injury, submission of the employer's report of injury, and the employer's payment of compensation constitute filing a claim.

Vigos v. Mountainland Builders, 993 P.2d 207 (Ut. 2000), citing Utah State Insurance Fund v. Dutson, 646 P.2d 707 (Ut. 1982). In this case, the foregoing elements for “informal filing” were met shortly after the date of Mr. C.’s accident on September 20, 1983, thereby satisfying the requirements of §99. Consequently, the Commission has jurisdiction to consider the merits of this claim.

The preceding discussion establishes that the Commission has jurisdiction over Mr. C.’s claim for additional workers’ compensation disability benefit. UTA concedes that Mr. C. was involved in a work-related accident and that he is entitled to the various medical and disability benefits established by the Act. The only remaining question is whether the Act authorizes the specific benefit that Mr. C. seeks; payment of disability compensation for a 10% permanent impairment that arose approximately 15 years ago.

The Commission believes the foregoing question is answered negatively by §66 of the Act, which provides “(t)he commission may make a permanent partial disability award at any time prior to eight years **after the date of injury**. . . .” This provision of the Act is not a statute of limitations, but rather, is one of the substantive provisions that define the nature, character and extent of the Legislatively-created benefits available under the Act. Other such substantive provisions, also found in §66, establish the amount and duration of permanent partial disability benefits. The Commission therefore concludes that an injured worker’s entitlement to permanent partial disability compensation is defined, in part, by the eight-year restriction in §66 on the Commission’s authority to award such benefits.

In this case, Mr. C. now seeks compensation for permanent partial disability arising from his surgery on February 1, 1984. Accepting that date as the “date of injury,” the Commission concludes that Mr. C.’s entitlement for permanent partial disability compensation arising from the surgery ended on February 1, 1992. For that reason, the ALJ properly denied that portion of Mr. C.’s claim.

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### **ORDER**

For the reasons stated above, the Commission affirms the Order of the ALJ and denies Mr. C.’s motion for review. It is so ordered.

Dated this 28<sup>th</sup> day of May, 2002.

R. Lee Ellertson, Commissioner

1. Because this claim arises from an accident occurring in 1983, the Commission applies the substantive provisions of the Utah Workers’ Compensation Act in effect on that date. At that time, the Act was codified as Title 35, Chapter 1, Utah Code Annotated.